

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:NED:BOS:TL-N-3398-99
BJLaterman

date: SEP 09 1999

to: District Director, New England District
E:PPQMB:D.Aronson

from: District Counsel, New England District, Boston

subject:

Statute Extensions

Taxable Years Ended January 29, [REDACTED]

January 28, [REDACTED] and January 27, [REDACTED]

Statute Expires: [REDACTED]

This refers to your memorandum requesting advice regarding extending the statute of limitations for the above-mentioned consolidated group's taxable years ended January 29, [REDACTED] January 28, [REDACTED] and January 27, [REDACTED]

[REDACTED] was a Delaware operation which filed a consolidated return with its subsidiaries for its taxable years ended January 29, [REDACTED] January 28, [REDACTED] and January 27, [REDACTED] [REDACTED] was engaged in two distinct retail businesses. One business was [REDACTED] which sold [REDACTED] merchandise. The other business was [REDACTED] which sold [REDACTED] supplies.

On [REDACTED] [REDACTED] received a Private Letter Ruling approving the proposed separation of the business in an I.R.C. § 368(a)(1)(D) reorganization. Pursuant to the plan of reorganization (which occurred in the taxable year ended January [REDACTED], the assets of [REDACTED] were transferred to a corporation in exchange for all of its stock followed by the distribution of said stock to [REDACTED]'s shareholders. Furthermore, on [REDACTED] [REDACTED] changed its name to [REDACTED] but retained the same EIN as [REDACTED]

Generally, the common parent, with certain exceptions not applicable here, is the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year. Treas. Reg. § 1.1502-77(a). The common parent in its name will give waivers, and any waiver given shall be considered as having also been given or executed by each subsidiary. Treas. Reg. § 1.1502-


77(a). Thus, generally the common parent is the proper party to sign consents, including the Form 872 waiver to extend the period of limitations, for all members in the group. Treas. Reg. § 1.1502-77(a). Treas. Reg. § 1.1502-77(c) provides that, unless the District Director agrees to the contrary, an agreement entered into by the common parent extending the time within which an assessment may be made in respect to the tax for a consolidated return year, shall be applicable to each corporation which was a member of the group during any part of such taxable year. The common parent and each subsidiary which was a member of the consolidated group during any part of the consolidated return year is severally liable for the tax for such year. Treas. Reg. § 1.1502-6(a).

Therefore, since [REDACTED] (now known as [REDACTED]), remains the common parent of the [REDACTED] group, it is the proper party to sign the Form 872 for the [REDACTED] group for the tax years [REDACTED], [REDACTED] and [REDACTED]. The caption of the Form 872 should read as follows: (Top of Form 872) [REDACTED] ([REDACTED], formerly [REDACTED]*. The EIN box on the front page should have the EIN of [REDACTED] which is the same EIN as for [REDACTED]. On the bottom of the front page of the Form 872, the asterisk should refer to the following: *This is with respect to the [REDACTED] consolidated group for the taxable years ended January 29, [REDACTED], January 28, [REDACTED] and January 27, [REDACTED]. The signature block on the Form 872 should indicate the following: [REDACTED]

The regulations under I.R.C. § 6501(c)(4) do not specify who may sign consents executed pursuant to that section. Accordingly, the Service will apply the rules applicable to the execution of the original returns to the execution of consents to extend the time to make an assessment. Rev. Rul. 83-41, 1983-1 C.B. 399, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305.

In the case of corporate returns, I.R.C. § 6062 provides that a corporation's income tax returns must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. The fact that an individual's name is signed on the return is prima facie evidence that the individual is authorized to sign the return. I.R.C. § 6064. However, any officer listed above may sign a consent, whether or not that person was the same individual who signed the return. Rev. Rul. 84-165, 1984-2 C.B. 305. Consequently, the Form 872 can be signed by [REDACTED] who is the current Vice President & Treasurer of [REDACTED].

If we can be of any further assistance please feel free to call the undersigned at (617) 565-7838.


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